

MARY PROCTOR,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-22

OPINION

INTRODUCTION

Appellant, Mary Proctor, appeals the decision of the Prince George's County Board of Education (the "local board") affirming the letter of reprimand issued to Appellant. The local board filed a response to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant filed a response and the local board filed a reply.

FACTUAL BACKGROUND

The issue before the State Board is whether the local board's decision to uphold the letter of reprimand issued by the Appellant's principal based on Appellant's conduct was arbitrary, unreasonable, or illegal. The Appellant's principal issued a reprimand to Appellant for two reasons. First, she refused to hold a live teaching session and second, she removed her assistant principal from her Zoom classroom when the assistant principal attempted to conduct an observation of Appellant's teaching.

Appellant is a tenured, certified special education teacher employed by Prince George's County Public Schools ("PGCPS"). During the 2020-2021 school year and Appellant's fifth year of teaching for PGCPS, Appellant taught intervention for reading and math at Ernest E. Just Middle School and provided instruction to her students via the school system's virtual platforms. Appellant was required to be observed periodically by the administrative and supervisory staff as part of the evaluation process to assure that Appellant was meeting professional competencies and that her students were receiving high quality instruction. (Local Bd. Response, Tab 1, Proctor Affidavit; Tab 2, Garris Affidavit; *See also* COMAR 13A.07.04).

During the 2020-2021 school year, Assistant Principal Mangierlett Garris was responsible for conducting a formal observation for Appellant. Ms. Garris contacted the Appellant on October 6, 2020, by email to notify Appellant that her observation was scheduled for October 22, 2020. The email explained to Appellant what she needed to complete prior to the observation, as well as information about what to expect after the observation. The email also stated "[I]f for any reason, you are not at work on your scheduled formal observation date,

your formal observation will occur on the first day you return to work within PGCEA guidelines.” (Local Bd. Response, Tab 2, Garris Affidavit, and Ex. A).

Appellant responded to Ms. Garris’ email requesting that the observation be moved to a later date because she was working on testing. Ms. Garris accommodated Appellant’s request by rescheduling the observation to November 5, 2020. Appellant then requested a second time to have her observation date moved to a later date because the Appellant was still working on testing. Appellant was notified of the new observation date of November 13, 2020.

On November 12, 2020, a preconference meeting was held and the Appellant was given an opportunity to make changes to her lesson plan so that it aligned with the correct format. Following the preconference meeting, Appellant sent an email to Ms. Garris stating that she was not feeling well, was not prepared for the observation, and would be absent for the observation. In addition to the email on November 12, 2020, Appellant left a voicemail message for Ms. Garris stating that she was asking for “one more day” to prepare. (Local Bd. Response, Tab 2, Garris Affidavit, Exs. A, B, C, D, & E). Ms. Garris responded to the Appellant’s email and informed the Appellant that her observation would take place on the day of her return. The Appellant responded to this email and stated that she would be ready. (Local Bd. Response, Tab 2, Garris Affidavit, and Ex. D).

On November 17, 2020, in preparation for her observation, the Appellant uploaded her material for the observation. (Local Bd. Response, Tab 1, Proctor Affidavit). On November 23, 2020, Appellant returned to teaching. On that day during the last period of the day, Ms. Garris attempted to conduct the formal observation via Appellant’s Zoom classroom. Appellant initially expressed surprise when Ms. Garris entered the Zoom classroom and stated, “she didn’t know [Ms. Garris] was coming to observe her.” (Local Bd. Response, Tab 2, Garris Affidavit). Ms. Garris reminded the Appellant that she had been notified on two occasions that her observation would occur on her first day back. At first, Appellant only protested that she was not prepared to be observed. Appellant then stated that she did not feel well and that she intended to take leave for the rest of the afternoon. The Appellant then removed Ms. Garris from the Zoom room. The notification on Ms. Garris’ screen read that “the Host has removed you from the Room.” *Id.*

Ms. Garris immediately sent an email to Appellant documenting their conversations stating the following:

This message serves as documentation that I entered your virtual class at 2:30 PM with the intention to conduct a formal observation on 11/23/20. You expressed a concern for my presence, stating you were not prepared for a formal observation, that you had just come back after being out for a week, and that you weren’t feeling well....You stated that I was being unreasonable. I responded by stating that I had been quite reasonable considering your observations. You then stated, well I’m taking off, and you removed me from your virtual class. I attempted to rejoin, but the class had not started.

(Local Bd. Response, Tab 2, Ex. E). Ms. Garris further notified the Appellant that she wanted to meet with her on November 24, 2020 for a corrective conversation. *Id.*

Ms. Garris also notified the Principal, Maryam Thomas, that the Appellant removed Ms. Garris from her Zoom classroom. As principal, Ms. Thomas investigated the situation. Ms. Thomas tried to enter Appellant's classroom via Zoom and received the message stating that the host had not started the meeting. Ms. Thomas then went to Appellant's Google Classroom and saw a message notifying students to complete an asynchronous assignment. (Local Bd. Response, Tab 2, Thomas Affidavit, and Ex. F).

The next day, on November 24, 2020, Ms. Thomas emailed the Appellant to ask her if she took leave the previous day. The Appellant initially responded that she did not "do a live session but did continue to work and responded to my students the entire time....I worked the entire time...If you want me to put in leave for that time, please advise me how to and I will do so, but I was actually working and continued working...and responding to students until late last night." (Local Bd. Response, Tab 2, Thomas Affidavit, and Ex. G). Ms. Thomas responded to the Appellant stating in part, "teachers cannot just decide they will not provide live instruction to students without prior approval. What occurred yesterday was unacceptable." *Id.* Eventually the Appellant submitted a leave request.

Appellant acknowledges that she knew that the observation would be conducted upon her return; "however, I never received confirmation of the date or class period in which [she] would be observed." (Local Bd. Response, Tab 1, Proctor Affidavit). Appellant further states that she was on break when Ms. Garris entered the classroom, that she was ill and had to use the bathroom, that she intended to take leave that day, and that she was getting ready to notify another administrator, her actual supervisor, Dr. Barrie that she was going to take leave. *Id.*

Upon receipt of the request for a meeting with Ms. Garris scheduled for November 24, 2020, the Appellant informed Ms. Garris that she wanted representation from her union present at the meeting. Per this request, the meeting was rescheduled for November 30, 2020. The Appellant, her PGCEA UniServe Representative, Gary Brennan, Ms. Thomas, and Ms. Garris all attended the meeting to discuss the incidents. (Local Bd. Response, Tab 1, Proctor Affidavit).

Ms. Thomas concluded that a letter of reprimand was necessary to address the inappropriate behaviors demonstrated by the Appellant on November 23, 2020 and November 24, 2020. Following the meeting with the Appellant, Ms. Thomas issued the letter of reprimand for Appellant's misconduct and insubordination stating in part, "abruptly ending and refusing to hold a live instructional session, in order to avoid a formal observation is unprofessional and ultimately unfair to our students." (Local Bd. Response, Tab 1, Ex. 2). When Appellant's representative questioned Ms. Thomas why non-disciplinary action was not taken, Ms. Thomas stated she thought the Appellant's actions were so "egregious" that she felt that discipline was warranted immediately and that she spoke with the Employee and Labor Relations Office and the decision to bypass non-disciplinary action in favor of the letter of reprimand was appropriate. (Local Bd. Response, Tab 1, Proctor Affidavit).

The Appellant then took extended leave for her chronic pain syndrome from December 1, 2020, until June 2021. (Local Bd. Response, Tab 1, Proctor Affidavit). During the 2020-2021

school year, Appellant served as the Prince George’s County Educators’ Association (“PGCEA”) Building Representative and Faculty Advisory Council Chair (“FAC”).

On December 7, 2021, the Appellant, through her representative, filed an appeal of her reprimand under §4-205 of the Education Article to D. Monica Goldson, Chief Executive Officer (“CEO”). In the appeal, Appellant argued that she did not engage in misconduct or insubordination. She maintained that she was prepared for her observation, but that she was too sick to offer instruction on the day in question. She also argued that the administration was unreasonable because they did not offer assistance or non-disciplinary corrective action in resolving the issue. (Local Bd. Response, Tab 10, Ex 2). By letter dated February 24, 2021, the CEO upheld the reprimand on the grounds that the Appellant engaged in misconduct and insubordination when Appellant removed her assistant principal from the virtual classroom while the assistant principal was attempting to conduct an observation. (Local Bd. Response, Tab 10, Ex 3).

Appellant appealed the CEO’s decision to the local board, which initially considered the appeal without a hearing or oral argument. On October 28, 2021, the local board issued a decision wherein it noted that it did not have the requisite majority of members voting to either uphold or reverse the CEO’s decision and, accordingly, with no action taken by the local board, the CEO’s decision remained in effect. (Local Bd. Response, Tab 3).

Appellant then timely appealed to the State Board, but that appeal was held in abeyance while the Appellant filed a motion for reconsideration and request for hearing before the local board. By decision dated December 9, 2021, the local board granted Appellant’s request for reconsideration, rescinded its earlier decision, and agreed to schedule oral argument. (Local Bd. Response, Tab 7). By agreement of the parties, oral argument was scheduled for May 19, 2022, at which time the local board heard arguments from counsel for the Appellant and the CEO.¹

By decision dated May 31, 2022, the local board determined that the CEO’s decision was not arbitrary, unreasonable, or illegal, and affirmed the CEO’s decision to uphold the letter of reprimand. (Local Bd. Decision, Tab 8). On June 16, 2022, Appellant’s counsel advised the State Board of the local board’s decision and advised that the appeal should proceed. (Local Bd. Response, Tab 9). On June 21, 2022, the State Board issued a memorandum acknowledging the receipt of the local board decision and advised on timelines for filings. (Local Bd. Response, Tab 10).

STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing a teacher reprimand disciplinary decision under Education Article §4-205 is that the local board decision shall be considered *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A local board decision is arbitrary or unreasonable if “it is contrary to sound educational policy” or if “a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.” COMAR 13A.01.05.06 B(1) & (2). The Appellant has the burden of proof by a preponderance of the evidence.” COMAR 13A.01.05.06D.

¹ The oral argument was conducted virtually but was not transcribed.

LEGAL ANALYSIS

The Appellant is appealing a letter of reprimand she received for misconduct and insubordination. The Appellant bears a heavy burden that the imposition of the discipline by the local board is either contrary to sound educational policy or arbitrary, unreasonable or illegal.

A. Unreasonable or Arbitrary

Typically, we examine misconduct and insubordination in terms of teacher discipline that involves a suspension or termination. Education Article §§ 6-202(a)(1)(ii) and (iii). Here however, Appellant's letter of reprimand does not rise to the level of suspension or termination and her appeal is reviewed under Education Article §4-205.

In prior cases, we have fleshed out the parameters of misconduct. *See Meyers v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 16-50 (2016); *Gwin v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 12-19 (2012); *McSwain v. Howard County Bd. of Educ.*, MSBE Op. No. 09-07 (2009). We do so again here. In *Resetar v. State Bd. of Educ.*, 284 Md. 537, 560-561 (1979), the Court of Appeals, interpreted the term "misconduct," as used in the educational arena, as follows:

The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences.

The Court also noted that the teacher's conduct must bear on the teacher's fitness to teach in order to constitute misconduct. *Resetar*, 284 Md. at 561. *See also Kinsey v. Montgomery County Bd. of Educ.*, 5 Op. MSBE 287, 288 (1989) (To constitute "misconduct in office" a teacher must engage in unprofessional conduct "which bears upon a teacher's fitness to teach" such that it "undermines his future classroom performance and overall impact on his students.").

In addition, the Court of Appeals defined "insubordination" as "a conscious, willful, and recalcitrant rejection of the authority of a supervisory official." *Resetar*, 284 Md. at 567. The State Board has previously defined insubordination as "willful disregard of express or implied directions of an employee and a refusal to obey reasonable orders." *See Stewart v. Baltimore County Bd. of Educ.*, MSBE Op. No. 05-15 (2005), *citing, Anastasi v. St. Mary's County Bd. of Educ.*, 4 Op. MSBE 192 (1985) and *Pepperman v. Board of Educ. of Montgomery County*, 7 Op. MSBE 555 (1997).

With this in mind, we turn to the record in this case to determine whether the Appellant has satisfied her heavy burden to demonstrate that the letter of reprimand she received for her misconduct and insubordination is arbitrary and unreasonable or contrary to sound educational policy.

The Appellant argues that she was ready for her observation but that she was not feeling well enough to teach that day to be observed. She avers that she did not feel well enough to teach the last period of that day and she was about to contact “her” supervisor, Dr. Barrie, to request emergency leave for the rest of the day. The Appellant’s arguments are not supported by the record. The leave the Appellant was requesting had to be approved by Assistant Principal Garris or Principal Thomas. *See* Local Bd. Response, Tab. 2, Thomas Affidavit. Just 10 days previously, the Appellant had contacted Ms. Garris to explain that she was not feeling well and that she needed to take leave for the November 13, 2020, scheduled observation. The Appellant offers no explanation as to why only 10 days later, she was going to contact a different person to request leave and why she did not reach out to Ms. Garris before her observation to let her know she was unwell as she did on November 12, 2020. It is undisputed that the Appellant did not tell Ms. Garris or Ms. Thomas that she intended to take leave until Ms. Garris attempted to conduct the previously arranged observation.

Furthermore, the Appellant’s emails on November 24, 2020, the day after the incident, do not support Appellant’s arguments. The emails between the Ms. Thomas and the Appellant make it clear that the Appellant had to be persuaded to take leave. Initially, the Appellant was reluctant to take leave for the previous day because she insisted, she had worked late into the evening. Only after Ms. Thomas advised the Appellant that she had to take leave because she decided not to teach a live class, did the Appellant submit a request for leave.

The letter of reprimand disciplines the Appellant for removing her supervisor, Ms. Garris, from the classroom thereby preventing Ms. Garris from conducting the formal observation that had been rescheduled at the Appellant’s request on three separate occasions. The letter of reprimand also disciplines Appellant for failing to hold a live class. Specifically, the letter of reprimand, states that the Appellant’s “abruptly ending and refusing to hold a live instructional session, in order to avoid a formal observation is unprofessional and ultimately unfair to our students.” *See* Local Bd. Response, Tab 1 Ex. 2.

We find it is not contrary to sound educational policy for administrators to expect to be able to observe teachers in whatever classrooms those teachers are providing instruction. Observations are an essential component of the evaluation process and are designed to facilitate teacher competency and a quality education for students. *See* COMAR 13A.07.04. A reasoning mind could reach the conclusion that a teacher who acted in such a manner with a supervisor should be disciplined and that such actions constitute both misconduct and insubordination. Based on the record in this case, we find that the letter of reprimand was reasonable.

The Appellant also argues that even if some form of correspondence documenting the incident was necessary, a letter of reprimand was unreasonable because the administration did not follow the mandates of progressive discipline as this was the Appellant’s first offense. According to the PGCPD Code of Employee Conduct and contrary to Appellant’s arguments, PGCPD is not obligated to use any specific level of progressive discipline or to use the disciplinary actions in any specific order. *See* Local Bd. Response, Tab 1, Ex. 4 at 13. We find that based on the record before us it was reasonable for Principal Thomas to exercise her discretion to issue a reprimand to the Appellant.

B. Illegal.

Appellant also asserts that the letter of reprimand was based on illegal reasons in retaliation for the Appellant's engaging in protected activity as a FAC at her school. The State Board of Education has recognized retaliation as an illegal reason for terminating an employee if it is done in response to an employee engaging in the protected activity of reporting illegal activity. *See Dorsey v. Carroll County Bd. of Educ.*, MSBE Op. No. 19-35 (2019), citing *Young v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-39 (2017). In order to establish a *prima facie* case of retaliation, an appellant must show that (1) he or she engaged in a protected activity; (2) that the school system took a materially adverse action against him; and (3) that a causal connection existed between the protected activity and the materially adverse action. *Young v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-39 (2017) (citing *Burling N. & Santa Fe Ry. Co. v. White*, 584 U.S. 53, 68 (2006)). The school system may then rebut the *prima facie* case by showing that there was a legitimate non-discriminatory reason for the adverse action. The burden then shifts back to the Appellant to show that the reasons given by the school system are pretextual. *Id.*

The record before us is devoid of any causal connection between the Appellant's activities as FAC and the discipline she received for removing her supervisor from the scheduled observation and her failure to hold a live class. In support of this argument, the Appellant states that earlier in the school year as FAC chair she argued against 2-hour faculty meetings and certain issues with the Wednesday schedule, and that the principal made a video "which was shared with staff where she targeted me personally for changes, she made to the Wednesday schedule..." *See Appellant's Response* at 8. She also states that one of her meetings with Principal Thomas "was contentious and unproductive." *Id.* These statements do not substantiate any causal connection between the discipline the Appellant received for removing Ms. Garris from a scheduled observation and the Appellant's decision to cancel a live class without any prior notice to her supervisors and the letter of reprimand she received for these actions.

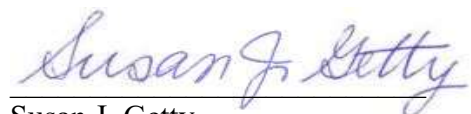
Examining all of the evidence in the record, we find the Appellant has failed to establish that the letter of reprimand was based on retaliation.

CONCLUSION

For all of the foregoing reasons, we affirm the decision of the local board upholding the issuance of the letter of reprimand.



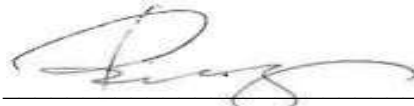
Clarence C. Crawford
President



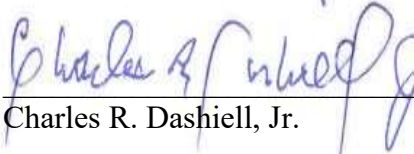
Susan J. Getty
Vice-President



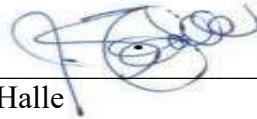
Shawn D. Bartley



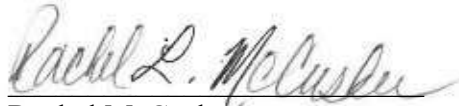
Chuen-Chin Bianca Chang



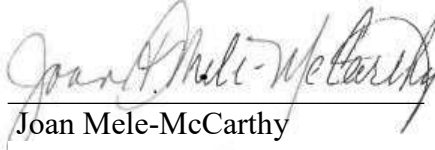
Charles R. Dashiell, Jr.



Jean Halle



Rachel McCusker



Joan Mele-McCarthy



Lori Morrow



Warner I. Sumpter



Holly C. Wilcox

Absent:

Gail H. Bates

Vermelle D. Greene

September 27, 2022